

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DK LIPA LLC,

Plaintiff,

-against-

SB ENERGY HOLDINGS, LLC (formerly
known as SYBAC SOLAR, LLC), *et al.*,

Defendants.

DK LIPA LLC,

Plaintiff,

-against-

MISF SOLAR LLC, *et al.*,

Defendants.

ORDER

19cv01405 (LGS) (DF)

20cv04273 (LGS) (DF)

DEBRA FREEMAN, United States Magistrate Judge:

In the above-captioned related cases (referred to herein as the “2019 Action” and the “2020 Action,” respectively), both of which have been referred to this Court for general pretrial supervision, the law firm of Farrell Fritz, P.C. (“Farrell Fritz” or the “Firm”), counsel of record for defendant SB Energy Holdings, LLC (“SB Energy”), formerly known as Sybac Solar LLC, in the 2019 Action, and for defendants Project NY LLC (“Project NY”) and Thomas Falz, Ulrich Falz, and Markus Falz (collectively, the “Falzes”) in the 2020 Action, has sought leave to withdraw from further representation of these defendants and has also sought a retaining lien. In each case, the Firm has proposed moving to withdraw by way of an order to show cause, noting that it does not wish to delay the proceedings. (*See* Dkt. 151 in the 2019 Action; Dkt. 66 in the 2020 Action.) In light of the statements made in the Firm’s additional submissions in support of

its applications (*see* Dkts. 153, 154 in the 2019 Action; Dkts. 67, 68 in the 2020 Action); and in recognition of the fact that, in the 2020 Action, a joint motion to dismiss has been filed by all defendants in that case, including Project NY and the Falzes, and that the motion is not yet fully briefed, lending some urgency to the issue of representation; it is hereby ORDERED as follows:

1. In each of the two actions, Farrell Fritz is directed to serve the defendant(s) that it represents with (a) a copy of the motion papers that it filed in that action, and (b) a copy of this Order, by means reasonably calculated to reach these defendants, and to file proof of such service, no later than December 11, 2020.
2. If any of the defendants currently represented by Farrell Fritz wish to be heard with respect to the Firm's application for leave to withdraw, then, **no later than December 18, 2020**, such defendants should submit their response(s) to the Court, with a copy to Farrell Fritz. As the undersigned is currently working remotely and will not have immediate access to mail or other material delivered to the Courthouse, any defendants who wish to file a response should contact my Chambers at (212) 805-4650 and leave a voicemail message, asking for email instructions and providing a telephone number where they may be reached so that such instructions may be given to them. Defendants' responses may be submitted *ex parte*; in other words, they need not be served on counsel for plaintiff DK LIPA LLC or any other party. This Court, in its discretion, will determine whether any responses it receives from defendants should be filed publicly or if the responses contain sensitive information that warrants their being placed under seal. If, by December 18, 2020, this Court receives no objection from defendants to Farrell Fritz's applications to withdraw and for a retaining lien, then this Court may grant the applications as unopposed.

3. Regardless of whether it receives any objections to Farrell Fritz's applications, this Court will hold a **telephonic conference on December 22, 2020 at 2:00 p.m.** with respect to those applications. For that conference, the parties are directed to call the following Toll-Free Number: 877-411-9748, and use Access Code: 9612281. The Falzes are directed to call in for this conference, together with corporate representatives of SB Energy and Project NY. If any of the Falzes is an authorized representative of one or both of these corporate entities, then he may appear at the conference in both an individual and corporate capacity.

4. Defendants SB Energy and Project NY are cautioned, however, that a corporation may not proceed before this Court without being represented by counsel. For this reason, if the Court permits Farrell Fritz to withdraw, then these corporate entities will need to retain new counsel, if they wish to continue to defend these actions. A failure of either SB Energy or Project NY to retain new counsel may result in that defendant's being held in default, and a default judgment may be entered against it.

5. In addition, the Falzes are cautioned that, if the Court permits Farrell Fritz to withdraw, and if the Falzes do not retain new counsel, then they will be expected to defend the claims against them on their own behalf without the benefit of counsel. The Falzes are also cautioned that, if they choose to proceed in the 2020 Action *pro se* (*i.e.*, without the assistance of an attorney), then they will be expected to proceed in that action diligently on a *pro se* basis, to attend all court conferences and other proceedings in person or remotely, as directed, and to comply, on their own, with all rules and procedures of the Court. The Falzes' failure to cooperate in the pretrial discovery process or to appear before the Court as required may result in the entry of a default judgment against them.

6. If, at any time prior to December 22, 2020, SB Energy, Project NY, and the Falzes all retain new counsel in this action, and formal Substitutions of Counsel are filed, then the December 22 conference will be canceled.

7. All discovery in both the 2019 and 2020 Actions shall be stayed pending further order of this Court.

Dated: New York, New York
December 8, 2020

SO ORDERED



DEBRA FREEMAN
United States Magistrate Judge

Copies to:

All counsel (via ECF)